The statement of defence so far as it relates to Mrs. Keyes is, after stating the service rendered by her to deceased, and the unpleasant character of these services that the deceased gave the check to her as and for her own after payment of debts and funeral expenses of deceased.

The defendant Hillyer says that he is simply a trustee of the money referred to, to see that the funeral expenses of the deceased and the debts incurred by the deceased about Bowmanville should be paid.

Upon the evidence, I do not think a gift to the defendant Mrs. Keyes has been established—either a gift *inter vivos* or a gift *mortis causa*. No more a gift to deceased's sister than to the plaintiff in the arrangement made prior to October 1st, of which both defendants were aware—Mrs. Keyes never had possession of the money in the bank. It was there, to the joint credit of both defendants.

I have some difficulty in coming to a conclusion, satisfactory to myself, as to whether or not an irrevocable trust was created in favour of the creditors of deceased, and of the surplus, if any, in favour of the defendant Mrs. Keyes. If such a trust was created then the plaintiff as administrator could not recover. Inconvenient as it might be for the creditors of deceased to look to the defendants for their pay, and inconvenient and troublesome as it certainly would be for Dr. Hillyer to administer such a trust, that would make no difference, if by what was done such a trust was created. My opinion is that what the deceased desired to do was not to part with the control of his money absolutely during his life, but to get it in the hands of the defendants for safe keeping. In the event of his wanting any of the money during his life, he was to have it. In the event of his death—he desired that his funeral expenses and his debts be paid out of this money, and that his sister should get the balance if any. This arrangement was testamentary in its character. The deceased thought it could be done, without the necessity of a will. This case cannot be put higher as it seems to me, than the case of where a donor delivers property to a third person for the donee. The money was delivered to a third person. If to Dr. Hillyer—to him as trustee—if to both defendants—to them as trustees for the payment of donor's debts. Until the authority of Dr. Hillyer was exercised, he was the agent or trustee of donor—and until authority exercised donor could revoke it, and not being exercised before death of donor, it was revoked by such death.